

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN  
&  
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

AS.No. 486 OF 1996()

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OS.32/1991 of SUB COURT, THIRUVALLA

APPELLANT/DEFENDANT:

TRAVANCORE SUGARS & CHEMICALS LIMITED,  
VALANJAVATTOM, TIRUVALLA,  
REPRESENTED BY ITS GENERAL  
MANAGER, MR. GEORGE ALEXANDR.

BY ADV. SRI. A.M.SHAFIQUE

RESPONDENTS/PLAINTIFF:

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SAM T. VARGHESE, S/O. E.V. VARGHESE, AGED 34,  
TC 11/1011/2, WATT'S LANE, KOWDIAR, TRIVANDRUM.

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION  
ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

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A.S. NO. 486 OF 1996

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DATED THIS, THE 20TH DAY OF SEPTEMBER, 2007.

J U D G M E N T

Raman, J.

This is an appeal, against the judgment and decree dated 21.7.1994 in O.S. 32/1991 on the file of the Sub Court, Tiruvalla. The suit was for recovery of earnest money paid by the plaintiff to the appellant /defendant. Earnest money was paid as per the tender condition for the supply of 4000 tonnes of firewood. So however, no agreement as such was executed by the plaintiff. According to the plaintiff, the tender conditions were unilateral to which conditions he was not amenable to. In the absence of any concluded contract between the parties, he sought return of the earnest money.

2. The appellant defendant contested the matter and also raised a counter claim for compensation for damages alleged to have been sustained because of the non supply of the firewood based on the tender submitted by the plaintiff. The evidence consists of Exts.A1 to A9, B1 to B8 and the oral testimony of PW1 and DW.1. The court below framed necessary issues. It referred to Clauses 5 and 11 in Ext.A4 and held that they are new and fresh terms deviating from Ext.B1 and plaintiff's request for excluding those

terms was rejected due to the recalcitrant attitude of the defendant and it was in such circumstances that the plaintiff could not execute the agreement. The above said finding that certain conditions were unilaterally varied by the appellant herein could not be successfully challenged before us based on the evidence on record. When there is a variation of the tender condition unilaterally, that will not bind the plaintiff and as such he cannot be held to be a defaulter in the matter of execution of the contract, as per the tender condition. Since he was not agreeable to the altered conditions, he did not execute any agreement. In the absence of any contract between the parties, the earnest money ought to have been returned to the plaintiff. In such circumstances, the decree granted in favour of the plaintiff cannot be held to be in any way vitiated.

The appeal is dismissed in limine.

P.R. RAMAN,  
(JUDGE)

V. K. MOHANAN,  
(JUDGE)

knc/-

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P.R. RAMAN &  
V.K. MOHANAN, JJ.  
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A.S. NO. 486 OF 1996  
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J U D G M E N T

DATED: 20.9.2007.